

In The United States District
Court For The Middle District
Of ALABAMA, Northern Division

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Jimmie E. PARKER

Plaintiff, Pro Se

Troy King, et al.

Defendants

U.S. DISTRICT COURT
MIDDLE DISTRICT

CASE NO. #

2:07-CV-624-WKW

Plaintiff's Objection to The
Denial of Preliminary Injunction

On the 31st of July, 2007, The
Magistrate Judge concluded Plaintiff
failed to establish a substantial
likelihood of success on the
merits of the complaint.

Plaintiff objects for the following
grounds;

(1.)

SUPPLEMENTAL INFORMATION

1. THE COURT AND DEFENDANTS
MISTAKENLY AND REPEATEDLY STATED
PLAINTIFF HAS A 1983, KANSAS, CONVICTION
FOR TAKING INDECENT LIBERTIES WITH A
CHILD, WHICH IS A FELONY.

IN REALITY PLAINTIFF PLEADED NO
CONTEST TO THE OFFENSE OF SEXUAL
BATTERY, WHICH IS A MISDEMEANOR.
(SEE PLAINTIFFS EXHIBIT A)

ONCE AGAIN PLAINTIFF AVERS REGISTRATION
IS NOT REQUIRED UNDER ANY FEDERAL
GUIDELINES, NEITHER THE JACOB WETTERLING
ACT, NOR THE NEW ADAM WALSH ACT,
DUE TO THE EXPIRATION OF THE
DURATION OF REGISTRATION FOR A SINGLE,
1983, MISDEMEANOR OFFENSE.

(SEE PLAINTIFFS EXHIBIT A), AND,
THE 1994 JACOB WETTERLING ACT,
42 U.S.C.S. 14071 (A)(1)(A) AND (B)(6)(A)(1)(A), AND,
THE 2006 ADAM WALSH ACT,
42 U.S.C.S. 16911 (2) AND 16915 (A)(1),
AND PLAINTIFFS SWORN AFFIDAVIT FOR
PRELIMINARY INJUNCTION,

1. Registration Vs. Self Incrimination

(A) The Court and Defendants point to the ALASKA CASE of Smith V Doe, 538 U.S. 84, 155 L.Ed. 2d 164, 123, S.Ct. 1140 (2003).

In which the Court determined ALASKA Registration and Community Notification "via the Internet" did not violate ~~EX~~ Post Facto LAW when applied retroactively.

The ALASKA ACT has ONLY those two components and the Justices determined that this was a VERY CLOSE CALL. ALASKA's ACT has 2 tiers of offenders for determining length of duration of registration. A single, non-aggravated offense requires registration for 15 yrs., and violent or aggravated offenses register for Life.

ALABAMA's ACT makes no such determination, ALL must register for Life

(B) ALASKA'S ACT REQUIRES REGISTRATION info, other than the usual CRIMINAL ARCHIVES, ALSO BE PASSIVELY DISEMINATED VIA THE INTERNET, MEANING ONE MUST SEEK OUT THE INFORMATION EITHER BY VISITING AND PURUSING THE CRIMINAL ARCHIVES OR ACTIVELY VISITING THE INTERNET WEB SITE,

WHEREAS ALABAMA'S ACT MANDATES THE "AGGRESSIVE" DISTRIBUTION OF THE INFORMATION VIA THE COMMUNITY NOTIFICATION FLYER, WHETHER OR NOT THE COMMUNITY OR INDIVIDUALS DESIRE THIS INFORMATION, AND IS MOST SIMILAR TO SHAMING PUNISHMENTS OF THE PAST, AND ACHIEVES THE SAME RESULTS AND EFFECTS OF STIGMA PLUS DISABILITIES WHICH EFFECTS AFFIRMATIVE DISABILITIES AND RESTRAINTS THROUGH PUBLIC SCORN, CONTEMPT, OSTRACISM, AND LOST OPPORTUNITIES FOR HOUSING AND EMPLOYMENT, THEREBY WHEN ALABAMA'S ACT IS APPLIED RETROACTIVELY IT INCREASES THE PENALTIES AND SANCTIONS TO GREATER THAN THAT WHICH WAS AUTHORIZED AT TIME OF OFFENSE.

(C) In addition Alabama's Act imposes restrictions and prohibitions on when and where Plaintiff can live and/or work, and provides severe felony penalties for any violations.

* Alaska's Act has no such restrictions and prohibitions.

Plaintiff avers that he is presently presented with the opportunity to live and work in another state on as little as, or less than one week's notice, for greater ~~than~~ compensation than found locally.

But due to the "retroactive" application of Alabama's "Act," Plaintiff is precluded, restricted and prohibited from exercising his Constitutional Rights of Liberty, freedom, Pursuit of Happiness, Right to Interstate Travel, and the right to freely apply his trade, in violation of Due Process Double Jeopardy, Ex Post Facto and the Separation of Powers Doctrine, for an offense occurring over a decade prior to the "Act." Fundamental and Inalienable rights can never be denied retroactively
(5)

(D) Plaintiff's registration of residence and/or employment locations provides the basis for Law Enforcement's investigation as to whether or not these reported and/or registered locations violate any of the restrictions and/or prohibitions of the "Act," for which prosecution can commence.

During Plaintiff's most recent registration a Sheriff's Deputy was dispatched to the reported and registered residence to physically inspect and determine whether Plaintiff was in compliance or violation of the "Act's" location and other restrictions and/or prohibitions, and registration was forestalled until said Deputy reported back to the registering officer.

Registration is compelled by statute and coerced under pain of prosecution. Registration removes Plaintiff's Constitutionally vested rights against self incrimination, as the likelihood of harmful and/or injurious disclosure is real and substantial. SEE; AL. Const. of 1901, Art. I section 36, EVERY thing in the Declaration of Rights is excepted -

(6)

- out of the general powers of Government and shall forever remain inviolate, if 2 provisions of the Constitution conflict Art. I will prevail, and SEE; AL. CONST. of 1901, Art. I sec. 6, Self Incrimination; one shall not be compelled to give evidence against oneself, and SEE; U.S. CONST. Amend 5, one shall not be compelled to be witness against oneself, and SEE; BAXTER V. PALMIGIANO, 425 U.S. 308, 47 LEd, 810, 96 S.Ct. 1551 (1996) one is privileged not to answer to official questions in any proceeding civil, criminal, formal, or informal, where answers might incriminate or form basis of investigation for future criminal proceedings,

Alabama's "Act" violates and removes Constitutional Laws and rights when applied retroactively for an offense occurring over a decade prior to the "Act." in violation of Due Process, Double Jeopardy, Ex Post Facto, and the Separation of Powers Doctrine. (7)

(E) DUE PROCESS CLAUSES of the
Constitutions; protects interests in
fair notice, compromised by retroactive
legislation, justification sufficient to
validate statutes prospective
application under due process
may not suffice to warrant
statutes retrospective application,
LANGRAT V. U.S.I. FILM PRODS.,
511 U.S. 244, 128 L.Ed. 2d. 229 (1994)

The Likelihood of injurious disclosure,
not prosecution prompts the Right
against Self Incrimination
Letkowitz V. TURLEY 38 L.Ed. 274 (1973)

Notwithstanding phrase in any criminal
case in text of Self Incrimination clause
of Federal Const's 5th Amend., clause's protection
encompasses compelled statements that
lead to discovery of incriminating evidence,
eventhough statements themselves are
not incriminating and are not introduced
into evidence.

U.S. V. HUBBELL, 147 L.Ed. 2d. 24
(2000)

(2) DUE PROCESS AND THE SEPARATION OF POWERS DOCTRINE V.S. THE RETROSPECTIVE APPLICATION OF RESTRICTIONS AND PROHIBITIONS OF RESIDENCES AND EMPLOYMENT AND ADVANCE NOTICE OF INTENT TO TRANSFER SAME

(A) UNLIKE THE ALASKA "ACT," ALABAMA'S "ACT," PROHIBITS AND RESTRICTS WHERE AND WHEN PLAINTIFF CAN LIVE AND WORK.

THIS SEVERELY INHIBITS AND/OR REMOVES PLAINTIFF'S CONST. VESTED FUNDAMENTAL AND INALIENABLE RIGHTS OF LIBERTY AND THE PURSUIT OF HAPPINESS.

PLAINTIFF CAN NOT CHANGE RESIDENCE NOR BEGIN EMPLOYMENT ON SHORT NOTICE NOR NO NOTICE AT ALL AND IS EXCLUDED FROM RESIDING OR WORKING IN CERTAIN LOCATIONS.

THE RETROACTIVE REMOVAL OF THESE CONST. VESTED FUNDAMENTAL, INALIENABLE RIGHTS FOR AN OFFENSE OCCURRING BEFORE THE "ACT," CAN BE CONSIDERED NOTHING OTHER THAN PUNISHMENT.

ART. I SEC. 10 CL. 9 OF THE FEDERAL CONST. STATES; -

- No State shall pass any Bill of Attainder or Ex Post Facto Law.

To violate Art. I sec. 10 cl. 9 of The Federal Const., the "Act.":

- (1) must be retroactive, applying to events occurring before its enactment.
- (2) It must disadvantage the offender effected by it, i.e., change legal consequences, or alter a substantial right. A judicial enlargement of a statute, i.e., retrospective application operates precisely as an Ex Post Facto Law. - Collins Vs. Youngblood, 497 U.S. 37, 111 L.Ed 2d, 30, (1990)

Due Process may be violated by a State Judiciary by misconstruing an otherwise valid statute.

Bowie V. Columbia 12 L.Ed. 2d, 894 (1963)

The U.S. Supreme Court recognizes punishment includes deprivations or suspension of Political or Civil Rights. "Punishment" is not restricted to deprivations of Life, Liberty or property. All Men have certain inalienable rights, including Life, Liberty, and the Pursuit of Happiness and in that pursuit all trades, honors and positions are alike, open to everyone and in protection of all such rights all are equal before the law. Any suspension or deprivation of these rights for Past Conduct is Punishment and can not be otherwise defined.

Cummings V. Missouri, 71 U.S. 277, 18 L.Ed. 356 (1867)

Custody generally encompasses most restrictions on liberty resulting from a criminal conviction, (ie, punishment) Pack V. Yusuf, 218 F.3d. 448, 455, (5th Cir. 2000) cited in footnotes no[#] (51) of Kirk vs. Collier, U.S. Lexis 70434, (5th Dist. 2006)
(11.)

15-20-26 (A) of ALABAMA'S "Act." states;
(UNLESS OTHERWISE EXEMPTED BY LAW, ETC.)
Possibly indicating Legislative
Acknowledgement that this section,
prohibiting Residence and Employment
Locations, when applied retrospectively
for an offense occurring prior to
the effective date of the "Act,"
violates Due Process, Ex Post Facto,
Bill of Attainder, Double Jeopardy
and the Separation of Powers
Doctrine because retrospective
application would constitute punishment
due to the removal of Fundamental
and Inalienable Const. Rights
retroactively.

Plain and obvious meaning and intention
of prohibition, "That NO STATE SHALL
PASS ANY EX POST FACTO LAW, is that
Legislatures shall not pass laws
after an act done, which shall
have relation to such act "OR"
shall punish.

CALDER VS. BULL, 3 U.S. 386, 390,
1 L. Ed. 648 (1798)

The Court has consistently held that statutes are to be prospective only, unless clearly indicated by the Legislature. Retrospective legislation is not favored by the Courts and statutes will not be construed as retrospective unless the language used is so clear that there is no other possible construction.

RILEY V. KENNEDY ~~LEXIS~~ LEXIS 191,
SUPREME CT. (2005) and

KITRELL V. BENJAMIN 396 S.W.2d 93, 94 (Ala. 1981)

15-20-26(A) states, "UNLESS OTHERWISE EXEMPTED BY LAW, ETC." is not clearly expressed retrospective application.

EXAMPLES OF RETROSPECTIVE LANGUAGE

- (1) 34-8-28(h) provisions of this amendatory section are remedial and curative and shall be retroactive to JAN. 1st 1998.
- (2) 11-50-16(c) and 11-43-80(d), provisions of this section shall be curative and retroactive.
- (3) Act. No. 2001-891 & AL. ACTS. 2001, it is the intent of the Legislature that this Act be construed as retroactive and curative.

(13)

Nothing in the LANGUAGE of ALI's "Act." shows positively expressed intent by the LEGISLATURE for RETRO-SPECTIVE application, Absent which, the "Act." has prospective only application. Notwithstanding the Courts and Defendants' assertions that 15-20-21, DEFINITIONS SEC. of the "Act." (1) ADULT CRIMINAL SEX OFFENDER, "A PERSON CONVICTED OF A SEX OFFENSE", is indicative of RETROSPECTIVE LANGUAGE. SEE; EXAMPLES OF RETROSPECTIVE LANGUAGE ON PREVIOUS PAGE.

WHERE RETROSPECTIVE application is claimed such must clearly be the intention, OR the COURT will PRESUME that the LAWMAKING is ACTING for the future AND NOT for the past, that is ENACTING A RULE of conduct which shall contrroll FUTURE rights and dealings of MEN RATHER THAN REVIEW AND AFFIX NEW obligations to that which has BEEN DONE in the past.

White V. US, 191 US. 545, 48 LEd. 295, 1903, cited in

SENIORS Civil Liberties Assn. V. Kemp, 761 F. Supp. 1528 (11th Cir. 1991)

The Supreme Court of Alabama stated; 'We indulge every presumption in favor of construing actions of the Legislature to have a prospective operation unless the Legislature's intention is otherwise stated in expressed terms'

City of Brewton v. Whites Auto Store, Inc.,
362 So2d 226, 227 (AL, 1978) cited in
JONES v. Casey, 445 So2d, 873, 875 (AL, 1983)
cited in,
Granite States Ins. Co. v. Styles, 541
So2d, 1062 (AL, 1989)

Const. Liberty embodied in Due Process clauses of the 5th and 14th Amendments of the Federal Const. places limitations on retroactive judicial application of statutory enactments and precludes courts' from effecting results that the Legislature is barred from achieving by the Ex Post Facto clause.

Bowie v. Columbia 12 LEd, 894 (1963)

No State shall pass any Ex Post Facto Law, which is ANY LAW PASSED AFTER the commission of an act that INCREASES the LEGAL CONSEQUENCES of the act. Collins v. Youngblood, 497 U.S. 37, 111 L.Ed.2d 30, 110 S.Ct. 2715 (1990)

The "Act," UNLIKE ALASKA'S ACT, RETROACTIVELY REMOVES THE FUNDAMENTAL AND INALIENABLE CONSTITUTIONALLY VESTED RIGHTS OF LIBERTY AND THE PURSUIT OF HAPPINESS DUE TO THE ADVANCE NOTICE OF CHANGES IN RESIDENCE AND/OR EMPLOYMENT AND THE PROHIBITIONS PLACED ON SAME, IN VIOLATION OF ANY NUMBER OF STATE AND FEDERAL CONSTITUTIONAL LAWS, WHEN APPLIED RETROACTIVELY FOR A CRIMINAL OFFENSE OCCURRING PRIOR TO THE "Act," AND IS BY DEFINITION PUNISHMENT.

3. PRIVILEGES AND IMMUNITIES
CLAUSES OF THE FEDERAL
CONST. ART. IV SEC. 2, AND comparative
AL. CONST. SECS. -

A.- NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES AND IMMUNITIES OF CITIZENS IN THE SEVERAL STATES. TO DENY PLAINTIFF THE CONST. PROTECTIONS OF DUE PROCESS, EX POST FACTO, DOUBLE JEOPARDY, AND THE SEPARATION OF POWERS DOCTRINE, AND PROTECTIONS AGAINST SELF INCRIMINATION, RETROSPECTIVELY, BY AL'S "ACT." WHICH REMOVES CONST. VESTED FUNDAMENTAL AND INALIENABLE RIGHTS OF LIBERTY AND THE PURSUIT OF HAPPINESS, DUE TO ADVANCE NOTICE OF CHANGES IN RESIDENCE AND EMPLOYMENT LOCATIONS AND THE PROHIBITIONS PLACED ON SAME, RETROSPECTIVELY FOR ACTS PREVIOUSLY DONE PRIOR TO AL'S "ACT.", WOULD ALSO BE TO DENY PLAINTIFF THE CONST. VESTED RIGHTS GRANTED ALL CITIZENS BY THE PRIVILEGES AND IMMUNITIES CLAUSES.

CONCLUSION

By the preponderance of evidence through the statutory language and the effects of the "Act," and relevant case law, and reliance on the Federal and Alabama Constitutional Law, Plaintiff has established a substantial likelihood of success on the merits of claims for relief and the issuance of the Preliminary Injunction sought or, in the alternative requests the Court to sever and save such portions of the "Act" deemed not offensive to the Constitutional Laws of The United States and relevant Alabama Constitutional Laws, by severing sections 15-20-23 and 15-20-23.1; advance notice of changes of residence and employment, and severing 15-20-26; prohibiting certain residence and employment locations retroactively, and/or in the alternative make a specific determination of the statutory language of 15-20-26; "unless otherwise exempted by law, etc." and what the specific exemptions are, thereby making the saved portions of the "Act" not offensive to Constitutional Laws.

Plaintiff respectfully requests that this Court consider treating this objection to the denial of Preliminary Injunction as a motion for summary judgement and enter judgment in any of the foregoing forms in favor of this Plaintiff,

Respectfully Submitted

Jimmie E. Parker.

Jimmie E. PARKER, Plaintiff, Pro Se
2960 Bell Aire Blvd.

Theodore, AL. 36582

Certificate of Service
under 28 U.S.C. 1746

I hereby certify that I have
this 11th day of August, 2007, served
a true copy of the foregoing on all
Defendants listed and addressed below by
placing same in the U.S. Mail, [REDACTED]
mail, with proper postage affixed.

* AL. Atty. Gen. Troy King
% Joshua Bearden of Counsel
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Montgomery, AL 36130-0152

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% Neal P. Conner of Counsel
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And To: U.S. Dist. Court Clerk
P.O. Bx. 711
Montgomery, AL 36101-0711
(20)

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
SEVENTH DIVISION

STATE OF KANSAS

PLAINTIFF

VS

83-CR-1543

JIMMY E. PARKER

DEFENDANT

JOURNAL ENTRY

On the 24th day of October, 1983, the above-entitled matter came on for hearing in the Twelfth Division of the Shawnee County District Court, the Honorable James P. Buchele, presiding. The State of Kansas appeared by Joan M. Hamilton, Assistant District Attorney. The defendant appeared in person and by Ronald Wurtz, his attorney. Thereupon, the State amended Indecent Liberties with a Child to Sexual Battery. Thereafter, the defendant waived preliminary hearing, formal filing and a jury trial and entered his plea of no contest to Sexual Battery, Session Laws, Chapter 109, New Section 13, Pen. Sec. K.S.A. 21-4502(1)(a). The Court made due inquiry and satisfied itself that the plea was given knowingly and voluntarily with the advice and assistance of counsel and that a factual basis existed. The Court accepted the plea and adjudged the defendant guilty. The matter was continued for sentencing.

Now on this 18th day of January, 1983, the above-entitled matter comes on for sentencing, the Honorable Franklin R. Theis, presiding. The State of Kansas appears by Sue Carpenter, Assistant District Attorney. The defendant appears in person and by Ronald Wurtz, his attorney. Thereupon, the Court, being duly advised in the matter suspends imposition of sentence and places the defendant on two (2) years probation under the usual and special conditions as stated in the order of probation and in defendant's case of 82-CR-2218.

IT IS SO ORDERED.


HONORABLE FRANKLIN R. THEIS
Seventh Division

Emmie E. Parker
60 Bell Aire Blvd.
Tomball, AL 36582

United States District Court Clerk
P.O. Box 711
Montgomery, AL 36101-0711